# IN THE SUPREME COURT OF TEXAS

NO. 09-0558

MARSH USA INC. AND MARSH & MCLENNAN COMPANIES, INC.,
PETITIONERS,

v.

REX COOK, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

**Argued September 16, 2010**

JUSTICE GREEN, joined by CHIEF JUSTICE JEFFERSON and JUSTICE LEHRMANN, dissenting.

The Court today decides that a non-solicitation agreement extracted from an employee in exchange for stock options can be enforceable solely because the employer's goodwill, which purportedly benefits from the gift of stock options, is an interest worthy of protection. ___ S.W.3d ___, ___. This decision is directly at odds with our holding in *Light v. Centel Cellular Co.*, 883 S.W.2d 642 (Tex. 1994), which required that an employer's consideration for a covenant not to compete must give rise to an interest in restraining trade. Yet the Court refuses to say that it is overruling *Light*. While I agree that goodwill is an interest worthy of protection—the Covenants

Not to Compete Act expressly refers to goodwill as a protectable interest[1]—the enforceability of this covenant does not hinge upon that determination. It hinges upon *consideration*—whether stock options given to an employee can justify a restraint of trade. The Act mentions nothing about stock options, and equating stock options with goodwill creates a rule by which any financial incentive given to an employee could justify a covenant not to compete. Our law prior to *Light*, and since, has applied the rule that covenants not to compete must be ancillary to an exchange of valuable consideration that justifies or necessitates a restraint of trade. *See, e.g.*, *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 849 (Tex. 2009) (holding that unless the consideration given by the employer gives rise to an interest in restraining competition and the covenant is designed "to enforce the employee's consideration or return promise[,] . . . the covenant is a naked restraint of trade and unenforceable"); *Justin Belt Co. v. Yost*, 502 S.W.2d 681, 683 (Tex. 1973) (holding that a restraint of trade must be "ancillary to and in support of another contract"). Because today's decision nullifies that requirement, and favors the enforcement of covenants not to compete based on financial incentives (something we've repeatedly held is unacceptable), I respectfully dissent.

The Court today abandons our previous application of the "ancillary to or part of" requirement codified in Texas Business and Commerce Code § 15.50(a) and instead defines the phrase as "reasonably related to." *See* ___ S.W.3d at ___. If the Legislature intended for enforceability of a covenant not to compete to depend upon whether the covenant was "reasonably

[1] TEX. BUS. & COM. CODE § 15.50(a) (referring to an enforceable covenant as one that is created to protect "goodwill or other business interest[s]").

related to an otherwise enforceable agreement," the Legislature could have easily chosen such language. Instead, the Legislature used a phrase from the common law prior to *Light*. *See DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 681–82 (Tex. 1990) (explaining the established common law principles governing covenants not to compete); RESTATEMENT (SECOND) OF CONTRACTS §§ 187, 188 (1981). *Light*'s application of the consideration prong of the statute, far from being a departure from the common law, seems consistent with the "relatively well established" common law as expressed in *DeSantis*, where we held that an enforceable covenant not to compete must be "ancillary to an otherwise valid transaction or relationship,"[2] and that under this requirement, a "restraint on competition is unreasonable unless it is part of and subsidiary to an otherwise valid transaction or relationship which *gives rise* to an interest worthy of protection." *DeSantis*, 793 S.W.2d at 681–82 (emphasis added). In *Light*, we held that under Texas Business and Commerce Code § 15.50, in order for a covenant to be "ancillary to an otherwise enforceable agreement": (1) "the consideration given by the employer in the otherwise enforceable agreement must *give rise* to the employer's interest in restraining the employee from competing; and (2) the covenant must be designed to enforce the employee's consideration or return promise in the otherwise enforceable agreement." 883 S.W.2d at 647 (emphasis added). The Court today holds that "*Light* diverged from the common law definition of 'give rise' as articulated in *DeSantis*," stating that "[r]ather than requiring that the otherwise enforceable agreement give rise to 'an interest worthy of protection,' *Light* imposed a stricter requirement: that the consideration give rise to 'the employer's interest in

[2] *See also Justin Belt Co.*, 502 S.W.2d at 683 (holding that a restraint of trade must be "ancillary to and in support of another contract").

restraining the employee from competing.'" ___ S.W.3d at ___ (emphasis omitted). I fail to see the difference between "an interest worthy of protection" (in this case, Marsh's goodwill), and "the employer's interest in restraining the employee from competing" (in this case, Marsh's protection of goodwill). I also fail to see how the Court can defend the "give rise" language of *DeSantis* and overrule, or "modify," the "give rise" language as used in *Light*, which relied on the language of *DeSantis*. *See Light*, 883 S.W.2d at 647. As the Court points out, the Act was intended to codify the common law;[3] therefore, the Act should also incorporate our common law interpretations of the term "ancillary to or part of." The Court's main problem with the "give rise" standard appears to be this: Stock options do not give rise to an interest in restraining trade, and therefore, the give rise standard cannot accompany the enforcement of a covenant based on stock options.

Goodwill is not the dispute in this case. The dispute is whether the *consideration* given to allegedly protect the employer's goodwill gives rise to an interest in restraining competition. There is no evidence in the record of whether Cook actually created goodwill for Marsh or whether he used any goodwill in competition with Marsh, circumstances remarkably similar to *DeSantis*. *See DeSantis*, 793 S.W.2d at 683–84.[4] Any financial incentive given to an employee can arguably

---

[3] ___ S.W.3d at ___ (citing *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 653 (Tex. 2006) (quoting House Research Org., Bill Analysis, Tex. S.B. 946, 71st Leg., R.S. (1989))).

[4] The Court seems to characterize *DeSantis* as a case dealing solely with confidential information. *See* ___ S.W.3d at ____. *DeSantis* was also a case about protecting goodwill, where we held that the evidence supporting the existence and misappropriation of goodwill was insufficient and that the covenant was therefore unenforceable. *See* 793 S.W.2d at 683–84. Wackenhut, like Marsh in this case, argued that the employee had created goodwill for the company and had used that goodwill to attract clients to a competitor. *Id.* at 683. Despite recognizing goodwill as an "interest worthy of protection," we held that Wackenhut failed to produce enough evidence that DeSantis actually increased Wackenhut's goodwill or "that he did or even could divert that goodwill to himself for his own benefit after leaving Wackenhut." *Id.* at 682–83 (considering that at least one of Wackenhut's clients had left Wackenhut to give business to DeSantis's new employer).

motivate the employee to increase his employer's goodwill, and every employee, if he performs his job as expected, creates goodwill for his employer. If any financial incentive that can encourage an employee to create more goodwill can satisfy the consideration prong of the Act, then we might as well ignore the consideration requirement all together. Under the Court's reasoning, a raise, a bonus, or even a salary could support an enforceable covenant.

Noticeably missing in § 15.50(a) is language enforcing a covenant ancillary to an employment "relationship," which is the language of the Restatement. *See* RESTATEMENT (SECOND) OF CONTRACTS § 188 (1981); *Sheshunoff*, 209 S.W.3d at 653–54 (tracking the evolution of the Act and how the Legislature rejected a version that would have enforced covenants "ancillary to an otherwise valid transaction or *relationship*" (emphasis added)). A mere employment relationship is not enough under the statute, which requires a separate enforceable agreement, but under today's ruling, it very well could be. *See* TEX. BUS. & COM. CODE § 15.50(a). Financial compensation accompanies virtually every form of employment.[5] Under the Court's ruling, the otherwise

[5] While goodwill is an interest worthy of protection, under the common law, its valuation and protection applies more in the sale of a business than the restriction of a former employee:

> The extent to which the restraint is needed to protect the promisee's interests will vary with the nature of the transaction. Where a sale of good will is involved, for example, the buyer's interest in what he has acquired cannot be effectively realized unless the seller engages not to act so as unreasonably to diminish the value of what he has sold. The same is true of any other property interest of which exclusive use is part of the value. In the case of a post-employment restraint, however, the promisee's interest is less clear. Such a restraint, in contrast to one accompanying a sale of good will, is not necessary in order for the employer to get the full value of what he has acquired. Instead, it must usually be justified on the ground that the employer has a legitimate interest in restraining the employee from appropriating valuable trade information and customer relationships to which he has had access in the course of his employment. Arguably the employer does not get the full value of the employment contract if he cannot confidently give the employee access to confidential information needed for most efficient performance of his job. But it is often difficult to distinguish between such information and normal skills of the trade, and preventing use of one may well prevent or inhibit use of the other. Because of this difference in the interest of the promisee, courts have generally been more willing to uphold promises to refrain from competition made in connection with sales of good

enforceable agreement could well be an agreement as to compensation. The Legislature expressly decided there must be an otherwise enforceable transaction, and in *DeSantis* and *Light*, we held that the transaction itself needs to create an interest worthy of protection and in restraining trade, or else the covenant is an unenforceable naked restraint of trade. *See Light*, 883 S.W.2d at 647; *DeSantis*, 793 S.W.2d 682 (referring to "unreasonable" restraints on competition as those that are not "part of and subsidiary to an otherwise valid transaction or relationship which gives rise to an interest worthy of protection"). To argue that Cook created goodwill for Marsh that he would not have created absent stock options is not only incapable of being proven, but blurs the true issue. The true issue is that Texas courts have stated time and again that an employer cannot *buy* a covenant not to compete, and the Court's decision allows Marsh and other employers to do exactly that.[6]

---

will than those made in connection with contracts of employment.

RESTATEMENT (SECOND) OF CONTRACTS § 188 cmt. b (1981). The distinction between what type of agreement is enforceable to protect goodwill in the context of the sale of a business and the context of post-employment restriction is unaddressed by §15.50, which applies to both contexts. *But see Hill v. Mobile Auto Trim, Inc.*, 725 S.W.2d 168, 177 (Tex. 1987) (Gonzalez, J., dissenting) (noting that Texas courts "scrutinize covenants not to compete in employment relationships more closely than covenants not to compete associated with the sale of a business"). Regardless, an employer's assertion of goodwill as the interest being protected does not end the inquiry, even under the consideration prong of the statute. How that employer protects its goodwill, and what it gives its employee in exchange for a covenant not to compete, are what matters. Here, Marsh's reasons for giving stock options are irrelevant; stock options do not justify a restraint of trade.

[6] *See, e.g.*, *Sheshunoff*, 209 S.W.3d at 650 (holding that allowing an employer to enforce a covenant "merely by promising to pay a sum of money" would be "inconsistent with *Light*'s requirements"); *Valley Diagnostic Clinic v. Dougherty*, 287 S.W.3d 151, 157 (Tex. App.—Corpus Christi 2009, no pet.) ("A compensation provision made only in exchange for a non-compete promise is precisely the sort of restraint of trade that Texas law prohibits."); *Trilogy Software, Inc. v. Callidus Software, Inc.*, 143 S.W.3d 452, 463 (Tex. App.—Austin 2004, pet. denied) ("[F]inancial benefits do not give rise to an 'interest worthy of protection' by the covenant not to compete."); *Strickland v. Medtronic, Inc.*, 97 S.W.3d 835, 839 (Tex. App.—Dallas 2003, pet. dism'd w.o.j.) (holding that the employer's promise to compensate the employee "in the event of economic hardship resulting from the non-compete agreement" did not give rise to an interest worthy of protection); *see also, e.g.*, *Oxford Global Res., Inc. v. Weekley-Cessnun*, No. Civ.A. 3:04-CV-0330, 2005 WL 350580, *4 n.8 (N.D. Tex. Feb. 8, 2005) (mem. op.) ("[S]tock options do not give rise to an employer's interest in restraining competition or solicitation."); *Olander v. Compass Bank & Compass Banchsares, Inc.*, 172 F. Supp. 2d 846, 855 (S.D. Tex. 2001) (explaining that the employer failed to "articulate[] any coherent theory explaining how [a] promise . . . to grant the right to buy stock at a set price . . . gives rise to an interest in restraining [the

The Court cannot rely on the second prong of § 15.50(a) to ensure that covenants which are "unreasonable" will not be enforced. Under the express language of the statute, only the first prong—the consideration prong—determines whether covenants are enforceable, while reasonableness defines only *the extent* to which they are enforceable. TEX. BUS. & COM. CODE §§ 15.50(a), 15.51(c) (stating that "[i]f the covenant is found to be ancillary to or part of an otherwise enforceable agreement . . . but contains limitations . . . that are not reasonable and impose a greater restraint than is necessary ," then the court "shall reform the covenant"). Therefore, the only method by which a covenant is unenforceable as a matter of law is when it is not ancillary to or part of an otherwise enforceable agreement. Despite the dicta of *Sheshunoff* defining reasonableness as the core inquiry in that case, the consideration prong remains an equally crucial inquiry under the Act, and its application is rendered meaningless by the Court's decision to concoct a new, broad definition of "ancillary or part of" as "reasonably related to."

The Legislature has not clarified or altered the meaning of the term "ancillary" since the Court defined it in *Light* seventeen years ago. Stare decisis applies with greater force to statutory construction for this very reason. *Sw. Bell Tel. Co. v. Mitchell*, 276 S.W.3d 443, 447 (Tex. 2008) ("'[I]n the area of statutory construction, the doctrine of stare decisis has its greatest force' because the Legislature can rectify a court's mistake, and if the Legislature does not do so, there is little reason for the court to reconsider whether its decision was correct." (quoting *Marmon v. Mustang Aviation, Inc.*, 430 S.W.2d 182, 186 (Tex.1968))). If Legislative intent were thwarted by our decision in *Light*, as the Court claims, the Legislature could have clarified its meaning of "ancillary

---

employee] from competing *after* he has left [the employer]").

to or part of" at some point during the past seventeen years.[7] "It is a firmly established statutory construction rule that once appellate courts construe a statute and the Legislature re-enacts or codifies that statute without substantial change, we presume that the Legislature has adopted the judicial interpretation." *Grapevine Excavation, Inc. v. Md. Lloyds*, 35 S.W.3d 1, 5 (Tex. 2000) ("Stare decisis has its greatest force in statutory construction cases."). The Legislature has amended other portions of the Covenants Not To Compete Act three times in the seventeen years since *Light* and has not changed the wording or meaning of the phrase "ancillary to or part of" since our application of the phrase in *Light*. Act of May 26, 1999, 76th Leg., R.S., ch. 1574, § 1, 1999 Tex. Gen. Laws 5408, 5408 (adding subsection (b) concerning physicians and covenants not to compete); Act of May 22, 2001, 77th Leg., R.S., ch. 1420, § 14.729, 2001 Tex. Gen. Laws 4210, 4515 (amending subsection (b)); Act of May 26, 2009, 81st Leg., R.S., ch. 971, § 1, 2009 Tex. Gen. Laws 2565, 2565 (amending subsection (b)).

Under this "firmly established statutory construction rule," we must presume the Legislature has adopted our previous definition of "ancillary to or part of" under the Act. *See Grapevine Excavation, Inc.*, 35 S.W.3d at 5. By instead concocting a more expansive definition of "ancillary to or part of" based on Black's and Webster's dictionaries, the Court ignores the will of the Legislature and the well established principles of stare decisis. *See generally Sw. Bell Tel. Co.*, 276 S.W.3d at 447 ("Generally, the doctrine of stare decisis dictates that once the Supreme Court announces a proposition of law, the decision is considered binding precedent." (internal quotation

[7] As the Court points out, the Legislature is capable of correcting our pronouncements on covenants not to compete that it disagrees with, as it passed the Act in 1989 to overturn our decision in *Hill v. Mobile Auto Trim, Inc.*, 725 S.W.2d 168 (Tex. 1987), within two years of its issuance. *See* ___ S.W.3d at ___.

omitted)); *Grapevine Excavation, Inc.*, 35 S.W.3d at 5. Despite the Court's assertion that we have consistently disapproved of the holding in *Light*, our cases on covenants not to compete since *Light* have merely liberalized *Light*'s holding so that the *timing* of consideration given for a covenant not to compete is no longer a technical concern. *See Mann Frankfort*, 289 S.W.3d at 851–53 (holding that a promise to provide confidential information can be implied from a covenant when confidential information is later provided); *Sheshunoff*, 209 S.W.3d at 650, 655 (holding that we should focus less on "overly technical disputes" engendered by *Light*'s footnote six regarding whether the consideration was transferred to the employee at the *time* of the agreement). Yet none of the Court's decisions since *Light* have questioned the rule requiring consideration for a covenant not to compete to give rise to an interest in restraining trade. *See Mann Frankfort*, 289 S.W.3d at 851–53; *Sheshunoff*, 209 S.W.3d at 649 ("We do not disturb the holding in *Light*."). In this case, unlike those others, we deal with the very nature of the consideration itself, and not its quantity, timing, or degree. This is not the type of overly technical dispute that *Sheshunoff* warned against. *See* 209 S.W.3d at 655–56 (listing, in dicta, that "the amount of information an employee has received, its importance, its true degree of confidentiality, and the time period over which it is received . . . are better addressed in determining whether and to what extent a restraint on competition is justified" rather than whether the covenant is enforceable).

Whether stock options constitute valid consideration is an essential inquiry under the prong of the statute requiring that the agreement be "ancillary to or part of an otherwise enforceable agreement." The fact that the Court now holds stock options satisfy this prong ignores the consensus amongst Texas courts that mere financial compensation as consideration will not support an

enforceable restraint of trade. *See, e.g., id.* at 650 (holding that allowing an employer to enforce a covenant "merely by promising to pay a sum of money" would be "inconsistent with *Light*'s requirements"); *Valley Diagnostic Clinic v. Dougherty*, 287 S.W.3d 151, 157 (Tex. App.—Corpus Christi 2009, no pet.) ("A compensation provision made only in exchange for a non-compete promise is precisely the sort of restraint that Texas law prohibits."); *Trilogy Software, Inc. v. Callidus Software, Inc.*, 143 S.W.3d 452, 463 (Tex. App.—Austin 2004, pet. denied) ("[F]inancial benefits do not give rise to an 'interest worthy of protection' by the covenant not to compete."); *Strickland v. Medtronic, Inc.*, 97 S.W.3d 835, 839 (Tex. App.—Dallas 2003, pet. dism'd w.o.j.) (holding that the employer's promise to compensate the employee "in the event of economic hardship resulting from the non-compete agreement" did not give rise to an interest worthy of protection); *see also, e.g., Oxford Global Res., Inc. v. Weekley-Cessnun*, No. Civ.A. 3:04-CV-0330, 2005 WL 350580, *4 n.8 (N.D. Tex. Feb. 8, 2005) (mem. op.) ("[S]tock options do not give rise to an employer's interest in restraining competition or solicitation."); *Olander v. Compass Bank & Compass Bancshares, Inc.*, 172 F. Supp. 2d 846, 855 (S.D. Tex. 2001) (explaining that the employer failed to "articulate[] any coherent theory explaining how [a] promise . . . to grant the right to buy stock at a set price . . . gives rise to an interest in restraining [the employee] from competing *after* he has left [the employer]"). Marsh cannot point to one thing of value that it gave Cook which now allows him to compete unfairly and which necessitates a restraint of trade. The affidavit submitted by Sally Dillenback, head of Marsh's Dallas office, explained that Marsh intended to make its valued employees owners so that they would contribute greater efforts to increase Marsh's goodwill. ___ S.W.3d at ___. Giving this affidavit any weight ignores the fact that the relevant question under

this Court's precedent is whether the consideration given by the employer for the covenant not to compete—not the employer's motivation or some other characteristic of the agreement or events leading up to the transaction—gives rise to an interest in restraining competition. *See Mann Frankfort*, 289 S.W.3d at 849; *Sheshunoff*, 209 S.W.3d at 648–49; *Light*, 883 S.W.2d at 647. *Why* consideration was given has never mattered so much as *what* was given. Trade secrets, confidential information, and special training are all forms of consideration that we have recognized may give rise to an interest in restraining trade. *See Mann Frankfort*, 289 S.W.3d at 852 (confidential information); *Sheshunoff*, 209 S.W.3d at 649–50 (confidential information and specialized training); *Light*, 883 S.W.2d at 647 n.14 (trade secrets). They are given to an employee for one reason: to allow the employee to perform his job better. They make the employee more valuable to the company, and more valuable to other companies, which is why they justify covenants not to compete.[8] An employee who receives deferred compensation or similar benefits is not in a better position to compete against his employer than an employee who has not received such benefits. Stock options are not a form of consideration this Court has ever held may support such a covenant.[9]

---

[8] In this case there was no transfer to Cook of anything that allowed him to perform his job better or be more competitive against Marsh; as Marsh admits,"in the insurance brokerage business, because the products and services offered by brokers are largely the same, the ability to develop quality customer relationships" is what truly sets one firm apart from another. What Marsh does not address, however, is that in this situation, non-compete agreements may simply be a cheaper alternative to paying a higher salary or bonus. The Court recognizes that Texas clearly disfavors the use of non-compete agreements for such a purpose. *See* ___ S.W.3d at ___ (citing *Potomac Fire Ins. Co. v. State*, 18 S.W.2d 929, 934 (Tex. Civ. App.—Austin 1929, writ ref'd) (holding that a contract between two insurance companies to limit compensation was unenforceable as it was intended to "crush and destroy competition")).

[9] *See Sheshunoff*, 209 S.W.3d at 660 (explaining that the consideration is usually of the type that increases the employee's market value by, for example, giving the employee "special knowledge and skills" that "increase [the employee's] value and compensation"). "The covenant, in turn, ensures that the costs incurred to develop human capital are protected against competitors who, having not made such expenditures, might offer higher salaries to employees and thereby appropriate the employer's investment." *Id.* Stock options do not develop the kind of human capital that can be taken by competitors, nor do they develop "special knowledge and skills." While stock options could motivate an

Allowing employers to obtain covenants not to compete by providing such financial incentives without actually giving the employee anything that gives rise to an interest in restraining trade is bad policy for Texas, and will make covenants not to compete much more commonplace in instances where there is little risk of unfair competition. The "give rise" requirement ensures that an employer seeking to restrain competition has given consideration for the covenant that fairly necessitates a restraint of trade, while respecting the fundamental tenet that at-will employment otherwise permits employees to put their talents to fair, competitive use elsewhere. *See Sheshunoff*, 209 S.W.3d at 659 (Jefferson, C.J., concurring) (explaining that only a covenant that protects a "legitimate business interest" is enforceable because it is consequently "not a direct restraint of trade in violation of public policy"); *see also* TEX. BUS. & COM. CODE § 15.04 (explaining that the purpose of Chapter 15 is to "maintain and promote economic competition in trade and commerce").

Lastly, if we are to ignore the doctrine of stare decisis, we must at least give trial courts some guidance in the enforcement of covenants not to compete, lest we face the multitude of issues raised by our new definition of "ancillary to or part of" in the coming years.[10]

---

employee to create goodwill, thus increasing the value of the interest worthy of protection, they don't themselves create an interest worthy of protection. The fact that an employee makes his employer's net worth grow does not alone justify a restraint of trade absent the employer's investment in making the employee more valuable to competitors. The employee is no more valuable to competitors after he receives stock options in the way that he would be after he receives special training, trade secrets, or confidential information.

[10] Stare decisis "results in predictability in the law, which allows people to rationally order their conduct and affairs." *Grapevine Excavation, Inc.*, 35 S.W.3d at 5. "[I]n most matters it is more important that the applicable rule of law be settled than that it be settled right." *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139 (2008) (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). "To overturn a decision settling one such matter simply because we might believe that decision is no longer 'right' would inevitably reflect a willingness to reconsider others. And that willingness could itself threaten to substitute disruption, confusion, and uncertainty for necessary legal stability." *Id.* "[I]f we did not follow our own decisions, no issue could ever be considered resolved. The potential volume of speculative relitigation under such circumstances alone ought to persuade us that stare decisis is a sound policy." *Weiner v. Wasson*, 900 S.W.2d 316, 320 (Tex. 1995).

The Court's new rule not only thwarts the legislative intent behind § 15.50, but also contradicts the strong policy goals inherent in Chapter 15, which protect the interests of free trade and a competitive market. *See* TEX. BUS. & COM. CODE § 15.04 ("The purpose of this Act is to maintain and promote economic competition in trade and commerce . . . and to provide the benefits of that competition to consumers in the state. The provisions of this Act shall be construed to accomplish this purpose . . . ."). For this reason, I dissent.

_____

Paul W. Green
Justice

OPINION DELIVERED: June 24, 2011